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WATER, POLITICS & LAND USE

Water Transfers:

Addressing Concerns of Agricultural Communities

Agricultural communities have traditionally resisted water transfers because they fear that their water rights may be challenged, their local economies harmed, or their groundwater levels reduced. Yet water transfers from agricultural areas have been proven to benefit both buyers and sellers and enhance the environment as well. Using the experience of the Yuba County Water Agency, this article discusses the benefits and practical problems of water transfers, and addresses the concerns agricultural communities commonly have with water transfers.

THE EXPERIENCE OF THE YUBA COUNTY WATER AGENCY

The Yuba County Water Agency owns and operates the Yuba River Development Project, which provides flood control, water conservation, hydroelectric power, fish and wildlife enhancement, and recreation on the lower Yuba River in the foothills of the Sierra Nevada. New Bullards Bar Dam, which can store nearly one million acre-feet of water, is one of the project's most important and popular features. The project has a hydroelectric power generating capacity of 370 megawatts, producing an average of over 1.5 billion kilowatt hours annually. In the 27 years that the project has operated, the fishery on the lower Yuba River has not been harmed: the average populations of chinook salmon and steelhead trout have exceeded average pre-project populations.

Yuba County Water Transfers

During the five drought years from 1987 through 1991, Yuba transferred over 800,000 acre-feet of water from storage. A water surplus was available for transfer during this drought due to a number of factors. First, Yuba and its member districts have lacked funds to complete the diversion, conveyance, and distribution facilities necessary to use surplus water beneficially within the agency's boundaries. Under the water right permits issued to Yuba by the State Water Resources Control Board (SWRCB), Yuba has until the year 2010 to complete its full beneficial use of water. A second factor has been cooperation between Yuba and Pacific Gas and Electric Company: PG&E meets the debt service obligations on Yuba's project bonds in exchange for all the hydroelectric power generated by the project. PG&E has agreed, on a year-to-year basis, to forgo releases of water in winter for power generation and allow greater releases in the summer, when the water can be used for water transfers. Finally, rainfall and runoff in the Yuba River watershed were generally greater between 1987 and 1991 than in other parts of the state; by contrast, runoff is only 38 percent of normal for 1992.

It is important to emphasize that the source of water for Yuba's transfers has been from storage. Other water agencies in Northern California (*e.g.*, Placer County Water Agency and Oroville-Wyandotte Irrigation District) have also transferred surplus water from storage the past several years. In addition, Yuba authorized its water users in 1991 to transfer approximately 82,000 acre-feet to the 1991 state drought water bank from their surface water entitlement from Yuba. See Wat C §383. Their transferred water was replaced with groundwater, so no land went out of production as a result of the transfer. Groundwater pumping was closely monitored by Yuba and its member districts to avoid adverse impacts to the aquifer.

The source of transferred water is a crucial factor in evaluating impacts on the area of origin. Those transfers that generally have little or no adverse local impacts (*e.g.*, transfers from storage, carefully managed conjunctive use programs, and conservation) should be preferred over transfers that can have adverse local impacts (*e.g.*, transfers involving land fallowing).

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constitute such a nonuse. [Footnote omitted.] Nevertheless, the perception that a water user may forfeit his water right due to a temporary transfer suggests that an affirmative statement to clarify existing law is desirable. The Commission therefore urges the enactment of legislation expressly stating that the transfer or exchange of water or water rights, in itself, should not be considered as evidence of waste and unreasonable use under Article 10, Section 2 of the California Constitution and that such a transfer or exchange should not result in forfeiture.

Water Code §1244 was enacted in 1980 in the form recommended by the Commission. It provides, among other things, that the transfer of water or water rights, in itself, will not constitute evidence of waste or unreasonable use and will not affect any determination of forfeiture with respect to appropriative rights.

Yuba decided not to transfer water in 1992 because of the SWRCB challenge to its water rights. Twenty-two members of the California Legislature, including Republicans and Democrats representing northern and southern California and urban and agricultural areas, have written to the SWRCB expressing their view that California law and policy do not support the assertion that a transfer of water is evidence of lack of diligence in putting water to beneficial use or should result in the forfeiture of water rights.

AGRICULTURAL COMMUNITIES' CONCERNS ABOUT WATER TRANSFERS

Water Right Protection

Although Wat C §1244 and other provisions of existing law protect the water rights of those who transfer water, agricultural communities often fear that SWRCB will use a water transfer as an opportunity to diminish the water rights of the transferor. The SWRCB and DFG can remove this concern by taking action in support of existing state law and policy that favor water transfers and protect a transferor's rights. So far, merely passing laws has not worked.

Third Party Impacts

Agricultural communities express great concern over the economic impact of water transfers on communities that transfer water. Any such effects would most likely result from transfers involving land fallowing rather than other types of transfers (*e.g.*, storage releases, conjunctive use of surface and groundwater supplies, or conservation). Land fallowing can also reduce wildlife habitat and food supplies.

Fifty percent of the water purchased for the 1991 water bank was from land fallowing. DWR's Retrospective concluded that the majority of land fallowing from the water bank was well within the fluctuations of agricultural activity in the affected counties, using a four-year average for the years 1987 through 1990. Retrospective, p 17. The Retrospective also concluded that the estimated effects of water bank activities on the economies of areas from which water was transferred was minor. Retrospective, p 19. Communities affected by transfers involving land fallowing disagree with these conclusions.

Revenues from Yuba's water transfers are paying for facilities to extend water service for irrigation and municipal use to areas that could not have afforded to pay for those facilities.

More evaluation of local economic impacts from land fallowing will be needed to develop water transfer policies to minimize those impacts. In the meantime, transfers not involving land fallowing should generally be given a higher priority. This was the approach used for the 1992 water bank. Unfortunately, land fallowing may be the most readily available source of water for transfers during the next several years.

Groundwater Impacts

Many agricultural communities are concerned about transferring groundwater directly and pumping groundwater to replace transferred surface water. Water Code §1220 puts some limitations on export of groundwater from the Delta. Overdrafts can impair the quality of groundwater and cause land subsidence. Besides reducing the storage capacity of the aquifer, subsidence can have less obvious negative results: for example, local officials in Yolo County believe subsidence from groundwater overdraft has lowered the elevation of certain flood control levees, exposing populated areas to increased risk of flooding.

Communities and local agencies must better understand and manage their groundwater resources to address and resolve the potential impacts of water transfers involving groundwater pumping. Until then, transfers that could cause or contribute to groundwater overdraft should be discouraged.

RECOMMENDATIONS

Governor Wilson's water policy continues to give water transfers an important role in addressing California's water needs. Legitimate concerns raised by agricultural communities that transfer water need to be resolved, however, before transfers are truly part of the solution. For example:

Regulatory agencies, particularly DFG and the SWRCB, must make sure it is both their policy and practice to act in concert with statutes favoring water transfers and protecting water rights. Too often the actions of these agencies create the perception that a water transfer can diminish the transferor's water right, which is a sure way to discourage water transfers.

The existing statutory framework for water transfers should be given a chance to work before new water transfer laws are adopted. Existing law and policy are adequate to facilitate water transfers. The 1991 water bank purchased more than 820,000 acre-feet (and had buyers for less than half that amount) with only minor changes in existing law. The 1992 water bank has also apparently purchased sufficient water to meet its buyers' demands without significant changes in the law. Radical new proposals, like AB 2090, introduced by Assemblymember Katz in 1991 but not enacted, only add to the perception that water rights may be threatened by a water transfer.

Priority should be given to transfers that tend not to have adverse impacts on the transferor's community. Transfers from storage, locally managed conjunctive use, and conservation should be favored over transfers requiring land fallowing.